

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. LOCALBIZUSA, INC., Respondent.	DOCKET NO. FCU-04-31
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued July 8, 2004)

On June 1, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution in C-04-95, involving LocalBizUSA, Inc. (LocalBiz), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On April 1, 2004, Mr. Richard Staples of Rich's Barber Shop of Lenox, Iowa (Rich's Barber Shop), submitted a complaint with the Board alleging that Rich's Barber Shop's local telephone bill included unauthorized charges. Board staff identified the matter as C-04-95 and, pursuant to Board rules, on April 14, 2004, forwarded the complaint to Enhanced Services Billing, Inc. (ESBI), for response within ten days. ESBI filed a response with the Board on April 22, 2004, indicating that it is engaged in the business of aggregating records for services providers and transmitting those records to local exchange carriers. ESBI indicated that the charges in dispute were submitted by LocalBiz. ESBI noted that its records indicated that credits were sent to Rich's Barber Shop's local telephone company in the amounts of \$34.95 plus tax and \$139.80 plus tax on March 10, 2004, and April 19, 2004, respectively.

On April 23, 2004, Board staff forwarded a copy of the complaint to LocalBiz for response within ten days. LocalBiz filed a response with the Board on April 28, 2004. LocalBiz indicated that its telemarketing company contacted Mr. Staples on October 15, 2003, to offer him a 14-day free trial web site. LocalBiz stated that Mr. Staples said he was interested in the free trial. LocalBiz stated that it contacted Mr. Staples again on October 28 to inform him that the site was on the Internet and mailed him a "welcome kit" containing details about the web site and LocalBiz's billing procedures and amounts. LocalBiz stated that Mr. Staples canceled the web site on March 10, 2004. LocalBiz stated that it issued a credit for one month and

ESBI issued the remaining credits. LocalBiz provided a copy of the recording of the third-party verification.

On May 18, 2004, Board staff issued a proposed resolution describing these events and concluding that LocalBiz did not obtain authorization to bill Mr. Staples even if he did not cancel during the free trial period. The resolution noted that LocalBiz issued a credit for one month of charges and ESBI issued the remaining credits to provide a full refund for amounts charged. Staff further noted that the web site was canceled and the account was closed. Regarding the third-party verification, staff noted that the verifier explained the free trial period and the charges that would result if Mr. Staples did not cancel the service before the end of the trial period, but did not ask for or obtain Mr. Staples's permission for the service. No party other than the Consumer Advocate has challenged the staff's proposed resolution.

In its June 1, 2004, petition, Consumer Advocate asserts that a civil penalty should be imposed against LocalBiz to deter future cramming violations. Consumer Advocate requests that the Board docket this complaint for formal proceeding. LocalBiz has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation in this matter. The Board will delay establishing a procedural schedule until August 2, 2004, and allow LocalBiz an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on June 1, 2004, is granted and docketed for formal proceeding.

2. LocalBizUSA, Inc., is directed to file a response to Consumer Advocate's petition on or before August 2, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 8th day of July, 2004.